



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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March 19, 2001

Mr. Robert Springer, Director
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Chicago, WI 60604-3507

Subject: Implementation of the AOC Policy in Wisconsin

Dear Mr. Springer:

In a letter dated November 15, 2000 we outlined our intentions for addressing the 6 hazardous waste clean-up issues discussed with you in June. For several items, including implementation of the Area of Contamination (AOC) policy, we anticipated resolving the issue through informal discussions and letters between the agencies. Based on the discussions we had during the meeting in June, and more recently at our meeting on March 9, 2001 we feel this issue is straightforward enough to deal with through letters between the agencies.

Background

Under both State and Federal rules, a generator of a solid waste must determine whether that waste is a hazardous waste. This can be accomplished by either testing the material or by applying knowledge. For post-RCRA wastes, the act of discarding a hazardous waste makes the responsible party liable under RCRA. For cleanup actions, hazardous waste determinations on contaminated media are typically made at the time the media (i.e. soil or groundwater) is "actively managed". Even if the waste was discarded before RCRA was enacted, "active management" results in a waste being generated and the need for a hazardous waste determination. EPA and WDNR have used the term "actively managed" for many years to include those ex-situ management options such as stabilization, solidification, and landfilling.

Under EPA's Area of Contamination (AOC) policy, AOC's are considered to be RCRA units and consolidation, capping or in-situ treatment of hazardous waste are not considered to be a new point of hazardous waste generation. Therefore, compliance with the Land Disposal Restrictions (LDR's) or Minimum Technology Requirements (MTR's) is not required. While EPA's AOC policy allows consolidation of generally dispersed contamination on the same site, it does not currently allow wastes to be consolidated from "widely separated areas."

Mr. Robert Springer – March 19, 2001

The preamble of the May 26, 1998 Phase IV LDR rule as well as several other recent EPA guidance documents, confirm the status and applicability of the AOC policy. The preamble indicates that “nothing in this rule affects implementation of the existing AOC policy. Therefore, soil managed within an AOC, even if it is removed from the land within such an area, would not be considered generated.”

WDNR Request

We are requesting EPA’s written concurrence that, in accordance with existing EPA guidance, WDNR can continue to use the AOC policy to allow contaminated material to be consolidated and capped or treated in place without “generating” a hazardous waste. We feel strongly that environmentally sound decisions on whether to consolidate contamination can be made without the need for imposing RCRA requirements.

Future Follow-up

At the March 9, 2001 meeting we also discussed our request to implement an expanded AOC policy in order to allow consolidation of discrete areas of contamination. EPA indicated that if we wanted to expand the AOC policy without establishing Corrective Action Management Units (CAMU’s), we need to identify the criteria that would be used to evaluate individual proposals, and pilot test our proposal to determine whether this approach has merit for implementation on a long-term basis. You should be aware that WDNR is currently putting together a pilot proposal that would utilize the requirements set forth in the NR 700 series of the Wisconsin Administrative Code to determine whether consolidation of non-contiguous areas of contamination can be approved without being considered hazardous waste generation.

Once we have your written response on use of the AOC policy as well as on the other issues we discussed on March 9, we intend to develop a comprehensive hazardous waste cleanup guidance document for use by both our staff as well as other interested parties. If you have any questions regarding this letter or would like to discuss this request in more detail, please do not hesitate to contact Mark Gordon at (608) 266-7278.

Sincerely,

Mark F. Giesfeldt, P.E., Director
Bureau for Remediation and Redevelopment

Suzanne Bangert, Director
Bureau of Waste Management

c: Air and Waste Management Team
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